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April 23, 2001

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Application of Section 251(b)(4) and 224(f)(1) of the Communications Act of 1934, as amended, CC Docket No. 01-77

Dear Ms. Salas:

Enclosed please find the original, seven (7) hard copies, and one electronic copy (via diskette) of Comments of AT&T Corp. in connection with the above referenced matter.

If you have any questions, please contact me at the number listed above. Thank you.

Sincerely,

Mark Trocinski

Mark F. Trocinski
Legal Assistant

MFT:mft

Encl.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Application of Section 251(b)(4) and and 224(f)(1) of the Communications Act of 1934, as amended, To Central Office Facilities of Incumbent Local Exchange Carriers.	)	CC Docket No. 01-77

COMMENTS OF AT&T CORP.

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April 23, 2001

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COMMENTS OF AT&T CORP.

Pursuant to the Commission's Public Notice, DA 01-728, released on March 22, 2001, AT&T Corp. ("AT&T") respectfully submits these Comments.

INTRODUCTION AND SUMMARY

On March 15, 2001, the Coalition of Competitive Fiber Providers ("Coalition") filed its Petition for Declaratory Ruling ("Petition"), under 47 C.F.R. § 1.2, seeking a declaratory ruling that sections 251(b)(4) and 224(f)(1) of the Communications Act require incumbent local exchange carriers ("ILECs") to provide telecommunications carriers with nondiscriminatory access to any duct, conduit, or right-of-way leading to, or located in, ILEC central office facilities. Petition 1. The Coalition argues that competitive local exchange carriers ("CLECs") are entitled to rely on sections 251(b)(4) and 224(f)(1) as an alternative to section 251(c)(6) for securing nondiscriminatory access to, and collocation rights in, ILEC central office facilities.

The Coalition contends that application of sections 251(b)(4) and 224(f)(1) to ILEC central office facilities is compelled by the language of those statutes, is consistent with the structure of the Act, and would further the pro-competitive goals underlying the Act. *See*

Petition 5-8. More specifically, the Coalition argues that (i) ILEC facilities leading to, and in, ILEC central offices that are used to house, run, or hold wiring constitute "ducts" or "conduits," (ii) ILEC central offices contain rights-of-way, and (iii) these ducts, conduits, and rights-of-way are subject to the nondiscriminatory access obligations of sections 251(b)(4) and 224(f)(1). *See* Petition 8-13. The Coalition claims that CLECs whose equipment is collocated in ILEC central office facilities under 251(c)(6) are entitled, under sections 251(b)(4) and 224(f)(1), to nondiscriminatory access to ILEC facilities necessary to cross-connect with other CLECs.

AT&T continues to believe that the clearest basis for the relief sought by the Coalition is through appropriate rules implementing Section 251(c)(6), which requires ILECs "to provide . . . for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the [ILEC]." *See* 47 U.S.C. § 251(c)(6). The Commission currently is assessing the proper scope of the collocation obligations imposed on ILECs by section 251(c)(6).[1] In that proceeding, AT&T has explained that section 251(c)(6) is properly construed to require, among other things, that ILECs permit CLECs to collocate equipment that performs transmission, switching, surveillance and other functionalities and to permit CLECs to cross-connect with other CLECs.[2] AT&T will not repeat that showing here

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[1] *See* Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 17806, ¶¶ 85-92 (2000) ("*Deployment of Wireline Services*") (seeking comment regarding collocation issues).

[2] *See, e.g.*, Reply Comments of AT&T Corp. at 7-38, *Deployment of Wireline Services Offering Advanced Telecommunications Capability, Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 98-147, CC Docket No. 96-98 (filed Nov. 14, 2000) ("AT&T *Wireline Services* Reply Comments"); Comments of AT&T Corp. at 5-34, *Deployment of Wireline Services Offering Advanced Telecommunications Capability, Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, CC

except to point out that it confirms that section 251(c)(6) is the most direct and compelling basis for addressing the Coalition's concerns regarding its ability to obtain access to ILEC central office facilities.

Nevertheless, the Coalition is correct that the obligations imposed and rights of access granted by sections 251(b)(4) and 224(f)(1) extend to ILEC central office facilities. Thus, AT&T agrees that sections 251(b)(4) and 224(f)(1), by their terms, provide an alternative basis for CLECs to obtain nondiscriminatory access, at a minimum, to defined pathways in ILEC central office facilities that can be used, for example, to cross-connect their collocated equipment with that of other CLECs. As demonstrated below, the Commission should make clear that ILEC central office facilities are not exempt from the nondiscriminatory access obligations imposed by sections 251(b)(4) and 224(f)(1). Indeed, the plain language of these provisions confirms that nondiscriminatory access to ILEC central office facilities is nothing more than one specific application of the broad access rights guaranteed by sections 251(a)(4) and 224(f)(1).

To be sure, the nondiscriminatory access rights guaranteed by sections 251(b)(4) and 224(f)(1) are not without limit. As the Commission has explained, the intent of Congress under section 224(f)(1) was "to permit . . . telecommunications carriers to 'piggyback' along distribution networks owned or controlled by utilities," rather than "granting access to every piece of equipment or real property owned or controlled by the utility." First Report & Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, 16085, ¶ 1186 (1996) ("*Local Competition Order*"). As a result,

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Docket No. 98-147, CC Docket No. 96-98 (filed Oct. 12, 2000) ("AT&T *Wireline Services* Comments").

sections 251(b)(4) and 224(f)(1) do not, by themselves, "encompass a general right of access to utility property,"[3] and the nondiscriminatory access rights guaranteed by these sections can be limited based on legitimate "capacity, safety, reliability, and engineering principles," *Local Competition Order*, 11 FCC Rcd at 16085, ¶ 1186. Despite these limitations, however, there can be no doubt that CLECs are entitled under sections 251(b)(4) and 224(f)(1) to install wiring in ducts, conduits or rights-of-way located in ILEC central offices so that they can, for example, cross-connect their collocated equipment with the collocated equipment of other CLECs.

ARGUMENT

SECTIONS 251(b)(4) AND 224(f)(1) MANDATE NONDISCRIMINATORY ACCESS BY CLECS TO "DUCTS," "CONDUITS," AND "RIGHTS-OF-WAY" IN ILEC CENTRAL OFFICE FACILITIES.

The right of nondiscriminatory access mandated by sections 251(b)(4) and 224(f)(1) is defined broadly and applies "without qualification" to "any" duct, conduit or right-of-way owned or controlled by an ILEC. *Competitive Networks Order*, ¶ 80. It follows that these access obligations provide CLECs with the right to use the "ducts," "conduits" or "rights-of-way" located inside ILEC central offices so that CLECs can install the wires, cables and transmission facilities that are necessary to cross-connect their collocated equipment with the collocated equipment of other CLECs.

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[3] *See* First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, *Promotion of Competitive Networks in Local Telecommunications Market, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Review of Sections 68.104, and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network*, 2000 FCC LEXIS 5672, ¶ 83 (rel. Oct. 25, 2000) ("*Competitive Networks Order*").

A. The Plain Language of Sections 251(a)(4) and 224(f)(1) Mandates Nondiscriminatory Access to Ducts, Conduits and Rights-of-Way Owned or Controlled By ILECs.

Section 251(b)(4) provides that a local exchange carrier has a "duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with Section 224 of [Title 47]." 47 U.S.C. § 251(b)(4). Section 224, in turn, provides that utilities, which include ILECs, "shall provide . . . any telecommunications carrier with nondiscriminatory access to *any* pole, duct, conduit, or right-of-way owned or controlled by [them]." 47 U.S.C. § 224(f)(1) (emphasis added). Congress' use of the word "any" reflects its view of the breadth of the nondiscriminatory access requirement of Section 224. *Cf. Monongahela Power Co.* v. *FCC*, 655 F.2d 1254, 1256 (D.C. Cir. 1981) (per curiam) (noting that Section 224 "is all encompassing in its wording"). Indeed, the Supreme Court has explained that the term "any" "has an expansive meaning, that is 'one or some indiscriminately of whatever kind.'" *United States* v. *Gonzales*, 520 U.S. 1, 5 (1997) (quoting *Webster's Third New Int'l Dictionary* 97 (1976)); *see also AT&T Corp.* v. *Iowa Utils. Bd.*, 525 U.S. 366, 392 (1999) (relying on Congress' use of the word "any" to reject narrow interpretation of 47 U.S.C. § 251(c)(3)).

The Commission, pursuant to its authority "to carry out the provisions of [Section 224]," has adopted this same understanding of the broad scope of Section 224. 47 U.S.C. § 224(b)(2). The Commission has reasoned that "the Section 224(f)(1) right of access to poles, ducts, conduits, and rights-of-way that a utility owns or controls is not limited by location or by how the utility's ownership or control was granted." *Competitive Networks Order*, ¶ 76. For example, the Commission has ruled that the term "conduit" – which is defined as "a structure containing one or more ducts, usually placed in the ground, in which cables or wires may be

installed," 47 C.F.R. § 1.1402(i) (2000) – includes both underground facilities (typically outside of buildings) as well as aboveground facilities (located inside buildings). *See Competitive Networks Order*, ¶ 80 (relying on industry use of term "riser conduit" to reject claim that "conduit" refers only to underground facilities).[4]

Similarly, the Commission has explained that the term "'rights-of-way' in buildings means, at a minimum, defined pathways that are being used or have been specifically identified for use as part of a utility's transmission and distribution network." *Id.* ¶ 82. In doing so, the Commission flatly rejected arguments that there can be no right-of-way inside a building. *Id.* Instead, the Commission concluded that "a right-of-way exists within the meaning of Section 224 . . . where (1) a pathway is actually used or has been specifically designated for use by a utility as part of its transmission and distribution network and (2) the boundaries of that pathway are clearly defined, either by written specification or by an unambiguous physical demarcation." *Id.*

Further, the Commission has ruled that the nondiscriminatory access obligations guaranteed by section 224 are not limited by the manner in which a utility obtained ownership or control over the facility to which access is sought. Specifically, nondiscriminatory access to utility "rights-of-way" under Section 224 includes access to property that is owned by a utility and used by the utility in the manner of a right of way. *Competitive Networks Order* ¶ 83. Thus, "where a utility uses its own property in connection with its transmission or distribution network

[4] The term "duct" is defined by the Commission as "a single enclosed raceway for conductors, cable and/or wire." 47 C.F.R. § 1.1402(k) (2000). Because "conduits" can be located both inside and outside buildings and because "conduits" are defined as structures "containing a *duct*," *id.* § 1.1402(i), it follows that the "ducts" to which CLECs are entitled to nondiscriminatory access under Section 224 also can be located both inside and outside buildings.

in a manner that would trigger the obligations of Section 224 if it had obtained a right-of-way from a private landowner," then "it should be considered to own or control a right-of-way within the meaning of Section 224." *Id.*[5]

Taken together, the broad language of Section 224 and the Commission's implementation of that language establish two principles that are relevant to the Coalition's Petition. First, Section 224 guarantees, "without qualification," nondiscriminatory access to "ducts," "conduits," and "rights-of-way" both inside *and* outside of buildings. Second, Section 224 also applies to utility-owned property that is used in connection with the utility's transmission and distribution network in the manner of a right-of-way.

B. Application of These Principles Confirms That CLECs Are Entitled To Nondiscriminatory Access to ILEC "Ducts," "Conduits," and "Rights-of-Way" to Permit Cross-Connection With Other CLECs.

The Commission has explained that CLEC-to-CLEC cross-connection serves the "public interest," *Local Competition Order*, 11 FCC Rcd at 15810, ¶ 594, and that requiring ILECs to "allow such interconnection of collocated equipment w[ould] foster competition by promoting efficient operation." *Id.* The Commission has reasoned that "[a]llowing incumbent LECs to prohibit collocating carriers from interconnecting their collocated equipment would require [CLECs] to interconnect collocated facilities by routing transmission facilities outside of the LECs' premises," and "would needlessly burden collocating carriers." *Id.* Moreover, CLEC-to-CLEC cross-connection at ILEC central office facilities would result in little, if any, corresponding burden on ILECs. *See* First Report and Order and Further Notice of Proposed

[5] The Commission also has identified the limitations on its authority under Section 224. For example, the Commission has recognized that the rights granted by Section 224 do not extend to ILECs because they are expressly excluded from the definition of telecommunications provider. *Local Competition Order*, 11 FCC Rcd at 16058, ¶ 1119; *accord* 47 U.S.C. § 224(a)(5).

Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 4761, 4779-80, ¶ 33 (1999) (describing access necessary for CLEC-to-CLEC cross connection).

Nevertheless, the D.C. Circuit subsequently criticized the Commission's order requiring ILECs to permit CLEC-to-CLEC cross-connects under section 251(c)(6) because the Commission did not explain how such cross-connects were "necessary" for interconnection to the ILEC. *GTE Serv. Corp.* v. *FCC*, 205 F.3d 416, 423 (D.C. Cir. 2000). The Commission currently is considering on remand whether CLEC-to-CLEC cross-connects are "necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier." 47 U.S.C. § 251(c)(6). *See Deployment of Wireline Services*, 15 FCC Rcd 17806, ¶ 85. In that proceeding, AT&T has demonstrated that CLEC-to-CLEC cross-connects plainly are authorized under section 251(c)(6). *See* AT&T *Wireline Services* Reply Comments at 35-38; AT&T *Wireline Services* Comments at 32-34.

Regardless of the Commission's ultimate determination in that separate proceeding, the Commission should rule that, under sections 251(b)(4) and 224(f)(1), CLECs are entitled to nondiscriminatory access to the ducts, conduits, and rights-of-way in ILEC central office facilities and that such access would enable them to cross-connect their collocated equipment with that of other CLECs. By their very nature, ILEC central office facilities are designed to accommodate the installation of wires and cables for the purposes of interconnection. As the Coalition properly notes, ILEC central offices are used "to house, run, and support wiring, cable and transmission facilities." Petition 8.

The Commission has explained that, most commonly, "the designated physical collocation space of several competitive entrants is located close together within the LEC

premises." *Local Competition Order*, 11 FCC Rcd at 15800-01, ¶ 592. As a result, CLEC-to-CLEC cross-connects "are often as simple as a transmission facility running from one collocation rack to an adjacent rack." *Deployment of Wireline Services*, 14 FCC Rcd at 4779-80, ¶ 33. Moreover, when the equipment of two CLECs is not adjacent to one another, CLECs can cross-connect that equipment using well-defined and pre-existing cable racks, floor penetrations, and other "defined pathways" in the ILEC's central office that are already part of its "transmission and distribution network." *See Competitive Networks Order*, ¶ 82.

Although Section 224 does not mandate blanket access to all property owned or controlled by ILECs, it clearly authorizes nondiscriminatory access to the ducts, conduits and rights-of-way in ILEC central offices that would be necessary to cross-connect CLEC equipment with that of other CLECs. Specifically, Section 224's grant of access to the "ducts, conduit and rights-of-way" owned and controlled by ILECs extends *inside* buildings and therefore extends *inside* ILEC central office facilities. *See Competitive Networks Order* ¶¶ 80, 82. Moreover, the terms "conduit" and "duct" encompass central office facilities that contain "a variety of enclosed tubes and pathways," *Id.* ¶ 80, that are used to house "conductors, cable and/or wire," 47 C.F.R. § 1.1402(k). Rights-of-way, which include "defined pathways that are being used or have been specifically identified for use as part of a utility's transmission and distribution network," *Competitive Networks Order* ¶ 82, also exist in ILEC central office facilities, and Section 224 grants CLECs nondiscriminatory access to those rights-of-way to, for example, cross-connect their equipment with equipment collocated by other CLECs.[6]

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[6] As the Coalition notes, *see* Petition at 13-14, Section 224 is not limited in the same manner as the collocation requirement of Section 251(c)(6). *See GTE Serv. Corp.* v. *FCC*, 205 F.3d 416, 422-23 (D.C. Cir. 2000) (discussing limitations on rights of CLECs to collocate at ILEC central offices).

This straightforward application of Section 224 is consistent with the underlying purposes of the 1996 Act because it promotes reasonable and nondiscriminatory access to prototypical bottleneck facilities owned or controlled by ILECs. The intent of Congress in enacting Section 224 was "to ensure that no party c[ould] use its control of [its poles, ducts, conduits, and rights-of-way] to impede, inadvertently or otherwise" competition for the provision of telecommunications services by CLECs. *Local Competition Order*, 11 FCC Rcd at 16060, ¶ 1123. That is precisely the situation that Section 224 addresses in this case. Because CLECs "connect to the collocation space via high-capacity lines," the Commission has reasoned that "the most efficient means of interconnecting with each other" may be cross-connection of "their respective collocation spaces on the LEC premises." *Local Competition Order*, 11 FCC Rcd at 15801, ¶¶ 592, 594.[7]

[7] If, however, CLECs were prohibited from cross-connecting at ILEC central office facilities, they would incur additional unnecessary expenses because they would have to "interconnect collocated facilities by routing transmission facilities outside of the LECs' premises." *Local Competition Order*, 11 FCC Rcd at 15801, ¶ 594. That barrier to competition is precisely the sort of unnecessary burden that Section 224 was designed to eliminate through its promotion of "efficient operation."

CONCLUSION

The Commission should grant the Petition for Declaratory Ruling filed by the Coalition of Competitive Fiber Providers to the extent it seeks a ruling that ILECs are required to provide access to defined pathways in their central office facilities so that CLECs can, for example, cross-connect their collocated equipment with that of other CLECs.

Respectfully submitted,

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April 23, 2001

CERTIFICATE OF SERVICE

I hereby certify that on this twenty-third day of April, 2001, I caused true and correct copies of the forgoing Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid or hand delivery to their addresses listed on the attached service list.

Dated: April 23, 2001
Washington, D.C.

Mark F. Trocinski

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Attachment A

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